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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

DETAILED ACTION

This communication is responsive to Amendment, filed 06/25/2007.

Claims 1-84 are pending in this application. In the Amendment, claims 73-84 were added, and claims 1, 54, 63, and 72 were amended. This action is made Final.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 21 and 52 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The term "substantially" in claims 21 and 52 is a relative term which renders the claim indefinite. The term "substantially" is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention. The claims and specification fail to define how the activity is being performed by the first user at "substantially the same time" that the out-of-band is communicated from the first user to the second user. For example, "substantially the same time" could mean exactly the same time or a 10 minutes delay.

Examiner interprets the limitation of the claim 21 to be "the same time."

Examiner interprets the limitation of the claim 52 to be "similar."

Claim Rejections - 35 USC § 103

Art Unit: 2174

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-4, 7-8, 18-32, 35-43, 47-55, 57-58, 60-64, 66-67, and 69-84 are rejected under 35 U.S.C. 103(a) as being unpatentable over Liles et al. ("Liles" U.S. Pat. No. 5,880,731) and Tang et al. ("Tang", U.S. Pat. No. 6,349,327).

Per claim 1, Liles teaches a method for communicating, the method comprising:

graphically representing, with an avatar capable of being animated, a first user in a communication session involving the first user and a second user (col. 3, lines 52-67);

communicating a message between the first user and the second user, the message conveying explicit information from the first user to the second user (col. 3, lines 32-41); and

communicating out-of-band information to the second user using a change in the avatar appearance or avatar animation as a communication conduit, wherein the out-of-band communication differs from the information conveyed in the message sent between the first user and the second user (col. 3, lines 28-42; col. 9, lines 55-65; *a participant can select and animate the avatar related to a context of the participant along with text message sent between participants*).

Liles does not specifically teach receiving, independently of the first user and the message, out-of-band information related to a context of the first user and communicating, based on stored data association, the out-of-band information to the second user using a change in the avatar appearance or avatar animation as a communication conduit, the change being

Art Unit: 2174

independent of a background display. However, Tang teaches receiving, independently of the first user and the message, out-of-band information related to a context of the first user (col. 5, lines 1-10; col. 13, lines 57-63 and col. 15, lines 6-15; col. 18, lines 55-67; *shows receiving out-of-band information related to context of the first user*) and communicating, based on stored data association, the out-of-band information to the second user using a change in the avatar appearance or avatar animation as a communication conduit, the change being independent of a background display (col. 5, lines 1-10; col. 7, lines 56-65; col. 9, lines 58-65; *shows changing appearance of a user*). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to include the teaching of Tang in the invention of Liles in order to provides a mechanism that enable users using their computers to know which other users are nearby in terms of type of work they are doing, such as the data they are accessing, the application they are using, and the time when such work was performed.

Per claim 2, the modified Liles teaches the method of claim 1 wherein the communication session is an instant messaging communication session (Liles, col. 3, lines 58-62; *online chat session*).

Per claim 3, the modified Liles the method of claim 1 wherein the avatar comprises a facial animation that does not include a body having an ear or a leg (Liles, fig. 7; element 124; col. 7, lines 49-54; *a user can modify an animation to include or exclude various features*).

Per claim 4, the modified Liles teaches the method of claim 1 wherein the avatar comprises a facial animation, including a neck, that does not include a body having an ear or a leg (Liles, fig. 7; animation 122; col. 7, lines 49-54; *a user can modify an animation to include or exclude various features*).

Per claim 7, the modified Liles teaches the method of claim 1 wherein the out-of-band information comprises information indicating a personality characteristic associated with the first user (Liles, col. 6, lines 50-67; *character setting*).

Per claim 8, the modified Liles teaches the method of claim 1 wherein the out-of-band information comprises information indicating an emotional state associated with the first user (Liles, col. 3, lines 32-34).

Per claim 18, the modified Liles teaches the method of claim 1 wherein out-of-band information comprises information related to a mood of the first user (Liles, fig. 7; col. 2, lines 32-34).

Per claim 19, the modified Liles teaches the method of claim 18 wherein the mood of the first user comprises one of happy, sad or angry (Liles, fig. 7; col. 2, lines 32-34).

Per claim 20, the modified Liles teaches the method of claim 1 wherein out-of-band information comprises information associated with an activity of the first user (Liles, col. 7, lines 18-42).

Per claim 21, the modified Liles teaches the method of claim 20 wherein the activity is being performed by the first user at the same time that the out-of-band message is communicated from the first user to the second user (Liles, col. 7, lines 18-42; *a user can perform an activity (i.e. checking a watch) at the same time a message is sent to another user*).

Per claim 22, the modified Liles teaches the method of claim 21 wherein the activity comprises one of working or listening to music (Liles, col. 7, lines 50-55; *a user works on customizing the avatar*).

Per claim 23, the modified Liles teaches the method of claim 5 wherein out-of-band information comprises information conveying that the first user has muted sounds associated with the avatar (Liles, col. 9, lines 1-5; *user can modified the avatar completely as desired*).

Per claim 24, the modified Liles teaches the method of claim 1 further comprising triggering, based on the information conveyed in the message from the first user to the second user, an animation of the avatar to convey the out-of-band information from the first user to the second user (Liles, col. 7, lines 18-22; col. 9, lines 55-65 and col. 10, lines 28-32; *a user can select an animation to convey a message to send to another user*).

Per claim 25, the modified Liles teaches the method of claim 24 wherein the trigger comprises a portion of text (Liles, col. 9, lines 55-65).

Per claim 26, the modified Liles teaches the method of claim 24 wherein the trigger comprises all of the text of the message (Liles, col. 9, lines 55-65 and col. 10, lines 28-32; *a user can select an animation in response to messages sent between the users*).

Per claim 27, the modified Liles teaches the method of claim 24 wherein the trigger comprises an audio portion of the message (Liles, col. 9, lines 55-65 and col. 10, lines 28-32; col. 13, lines 35-41; *a user can select an animation in response to the sound when a user joins the chat session*).

Per claim 28, the modified Liles teaches the method of claim 24 wherein the trigger comprises passing a predetermined amount of time during which the first user does not communicate a message to the second user (Liles, col. 9, lines 24-26).

Per claim 29, the modified Liles teaches the method of claim 24 wherein the trigger comprises passing a predetermined amount of time during which the first user does not use a

Art Unit: 2174

computing device that is used by the first user to communicate with the second user in the communication session (Liles, col. 9, lines 24-26).

Per claim 30, the modified Liles teaches the method of claim 1 wherein the avatar animation used as the communication conduit comprises a facial expression of the avatar (Liles, fig. 7).

Per claim 31, the modified Liles teaches the method of claim 1 wherein the avatar animation used as the communication conduit comprises a gesture made by a hand of the avatar or a gesture made by an arm of the avatar (Liles, col. 7, lines 30-35).

Per claim 32, the modified Liles teaches the method of claim 1 wherein the avatar animation used as the communication conduit comprises movement of a body of the avatar (Liles, col. 7, lines 30-35).

Per claim 35, the modified Liles teaches the method of claim 1 wherein the avatar animation used as the communication conduit comprises a breakout animation that involves displaying avatar outside of normal display space occupied by the avatar (Liles, col. 7, lines 13-16 and col. 9, lines 1-5; *a user can modify the avatar as desired and move avatar within the room*).

Per claim 36, the modified Liles teaches the method of claim 35 wherein the breakout animation comprises telescoping the avatar (Liles, col. 7, lines 13-16 and col. 9, lines 1-5; *a user can modify the avatar as desired*).

Per claim 37, the modified Liles teaches the method of claim 35 wherein the breakout animation comprises resizing the avatar (Lilies, col. 7, lines 13-16 and col. 9, lines 1-5; *a user can modify the avatar as desired*).

Per claim 38, the modified Liles teaches the method of claim 35 wherein the breakout animation comprises repositioning the avatar (Liles, col. 7, lines 13-16 and col. 9, lines 1-5; *a user can modify the avatar as desired and move avatar within the room*).

Per claim 39, the modified Liles teaches the method of claim 1 further comprising providing the first user with multiple preconfigured avatars having associated preselected animations and enabling the first user to select a particular avatar to represent the user in the communications session (Liles, col. 9, lines 34-46).

Per claim 40, the modified Liles teaches the method of claim 39 further comprising persistently associating the first user with the selected avatar to represent the first user in subsequent communication sessions (Liles, col. 9, lines 34-46; *a user can select an avatar to represent the user*).

Per claim 41, the modified Liles teaches the method of claim 39 further comprising enabling the first user to modify the appearance of the avatar (Liles, col. 9, lines 1-5).

Per claim 42, the modified Liles teaches the method of claim 41 wherein enabling the first user to modify the appearance of the avatar comprises enabling the first user to use a slide bar to indicate a particular modification of a particular feature of the avatar (Liles, fig. 3; *a user can use the scroll bar to select a different avatar to change the appearance of the avatar in the chat room*).

Per claim 43, the modified Liles teaches the method of claim 41 wherein enabling the first user to modify the appearance of the avatar comprises enabling the first user to modify appearance of the avatar to reflect a characteristic of the first user (Liles, fig. 3; col. 9, lines 1-5;

Art Unit: 2174

a user can select an avatar to reflect a characteristic of the user or modify the avatar as desired).

Per claim 47, the modified Liles teaches the method of claim 1 further comprising enabling the first user to modify a trigger used to cause an animation of the avatar (Liles, col. 8, line 61-col. 9, line 5).

Per claim 48, the modified Liles the method of claim 47 wherein the trigger comprises text included in the message sent from the first user to the second user (Liles, col. 7, lines 18-22; col. 9, lines 55-65; *a user can select animation in response to message sent between the users*).

Per claim 49, the modified Liles teaches the method of claim 1 further comprising animating the avatar for use as an information assistant to convey information to the first user (Liles, col. 7, lines 25-35).

Per claim 50, the modified Liles teaches the method of claim 1 further comprising enabling use of the avatar by an application other than a communications application (Liles, col. 9, lines 4-15; *a bitmap file can be view by other application that is able to view bitmap files*).

Per claim 51, the modified Liles teaches the method of claim 50 wherein enabling use of the avatar by an application other than a communications application comprises enabling use of the avatar in an online journal (Liles, col. 9, lines 4-15; *a bitmap file can be view by other application that is able to view bitmap files*).

Per claim 52, the modified Liles teaches the method of claim 1 further comprising displaying a depiction of the avatar in the form that is similar to a trading card (Liles, col. 9, lines 9-15; *a user can send their customized avatar to other users*).

Per claim 53, the modified Liles teaches the method of claim 52 wherein the trading card depiction of the avatar comprises a trading card depiction of the avatar that includes characteristics associated with the first user (Liles, col. 1-5; a user can customized the avatars as desired).

Claims 54 and 55 are rejected under the same rationale as claims 1 and 2 respectively.

Claims 57 and 58 are rejected under the same rationale as claims 7 and 8 respectively.

Claims 60, 61, and 62 are rejected under the same rationale as claims 18, 20, 47 respectively.

Claims 63 and 64 are rejected under the same rationale as claims 1 and 2 respectively.

Claims 66 and 67 are rejected under the same rationale as claims 7 and 8 respectively.

Claims 69, 70, and 71 are rejected under the same rationale as claims 18, 20, 47 respectively.

Claim 72 is rejected under the same rationale as claim 1.

Per claim 73, the modified Liles teaches the system of claim 72, wherein the means for graphically representing comprises means for graphically representing an avatar and an associated background display (Liles, fig. 13; *avatar 254 and associated background*).

Per claim 74, the modified Liles teaches the system of claim 72, wherein the out-of-band information comprises information associated with an activity of the first user determined based on user interaction with a computer application occurring during a time when the message is communicated between the first user and the second user (Tang, col. 5, lines 1-18; col. 8, lines 55-65).

Art Unit: 2174

Per claim 75, the modified Liles teaches the system of claim 72, further comprising: means for determining whether to change the avatar appearance or avatar animation to communicate the received out-of-band information based on other out-of-band information received independently of the first user and the message (Tang, col. 7, lines 55-65; col. 13, lines 57-64; col. 15, lines 5-15; col. 18, lines 55-67; *shows changing appearance of a user*).

Claims 76-78 are rejected under the same rationale as claims 73-75 respectively.

Claims 79-81 are rejected under the same rationale as claims 73-75 respectively.

Claims 82-84 are rejected under the same rationale as claims 73-75 respectively.

Claims 5-6, 9-17, 56, 59, 65, and 68 are rejected under 35 U.S.C. 103(a) as being unpatentable over Liles, Tang et al. ("Tang", U.S. Pat. No. 6,349,327), and Kim et al. ("Kim", WO 01/84461 A1).

Per claim 5, the modified Liles teaches the method of claim 1, but does not teaches wherein the out-of-band information comprises information indicating an environmental condition associated with the first user. However, Kim teaches the out-of-band information comprises information indicating an environmental condition associated with the first user (page 2, lines 5-14). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to include the teaching of Kim in the invention of the modified Liles because it provides users with an enjoyable on-line chatting using various setting for a character in the virtual world that reflect the real world setting of a user.

Per claim 6, the modified Liles teaches the method of claim 5 wherein the environmental condition comprises an environmental condition related to weather occurring in a geographic location near the first user (Liles, col. 2, lines 10-14 and lines 28-30).

Per claim 9, the modified Liles teaches the method of claim 1, but does not specifically teach wherein the out-of-band information comprises information indicating a setting characteristic associated with the first user. However, Kim teaches the out-of-band information comprises information indicating a setting characteristic associated with the first user (page 2, lines 5-14). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to include the teaching of Kim in the invention of the modified Liles because it provides users with an enjoyable on-line chatting using various setting for a character in the virtual world that reflect the real world setting of a user.

Per claim 10, the modified Liles teaches the method of claim 9 wherein the setting characteristic comprises a characteristic related to time of day of the first user (Kim, col. 2, line 23).

Per claim 11, the modified Liles the modified Liles teaches the method of claim 9 wherein the setting characteristic comprises a characteristic related to time of year (Kim, col. 2, lines 5-9).

Per claim 12, the modified Liles teaches the method of claim 11 wherein the time of year comprises a holiday (Kim, col. 2, lines 5-9; *each season comprises a holiday*).

Per claim 13, the modified Liles teaches the method of claim 11 wherein the time of year comprises a season wherein the season is one of spring, summer, fall or winter (Kim, col. 2, lines 5-9).

Art Unit: 2174

Per claim 14, the modified Liles teaches the method of claim 9 wherein the setting characteristic comprises a characteristic associated with a work setting (Kim, col. 2, lines 10-14 and lines 29-34; *geographic setting or physical location of the user*).

Per claims 15-17, the modified Liles teaches the method of claim 9 wherein the setting characteristic comprises a characteristic associated with a recreation setting such as a beach setting, a tropical setting, or a winter sport setting (Kim, col. 2, lines 10-14 and lines 29-34; *it is noted the geographic setting where the user lives or physical location of the user may comprises a recreation setting*).

Claim 56 is rejected under the same rationale as claim 5.

Claim 59 is rejected under the same rationale as claim 9.

Claim 65 is rejected under the same rationale as claim 5.

Claim 68 is rejected under the same rationale as claim 9.

Claims 33 and 34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Liles, Tang et al. and Matsuda (U.S. Pat. No. 7,007,065).

Per claims 33 and 34, the modified Liles teaches the method of claim 1, but does not teach wherein the avatar animation used as the communication conduit comprises sounds made by the avatar, and wherein at least some of the sounds comprise a voice based on a voice of the first user. However Matsuda teaches wherein the avatar animation used as the communication conduit comprises sounds made by the avatar, and wherein at least some of the sounds comprise a voice based on a voice of the first user (col. 1, lines 8-10; col. 3, lines 30-34; col. 5, lines 50-55). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the

Art Unit: 2174

invention to include the teaching of Matsuda in the invention of the modified Liles in order to provide an avatar that is active in a shared virtual space, and made to output a sound during a chat.

Claims 44-46 are rejected under 35 U.S.C. 103(a) as being unpatentable over Liles, Tang et al. and Ostermann et al. (“Ostermann”, U.S. Pat. No. 7,177,811).

Per claims 44-46, the modified Liles teaches modification of the appearance and characteristic of a user as described above, but does not specifically teach wherein the characteristic of the first user comprises one of age, gender, hair color, eye color, or a facial feature, the appearance of the avatar comprises enabling the first user to modify appearance of the avatar by adding, changing or deleting a prop displayed with the avatar, and wherein the prop comprises one of eyeglasses, sunglasses, a hat, or earrings. However, Ostermann teaches wherein the characteristic of the first user comprises one of age, gender, hair color, eye color, or a facial feature, the appearance of the avatar comprises enabling the first user to modify appearance of the avatar by adding, changing or deleting a prop displayed with the avatar, and wherein the prop comprises one of eyeglasses, sunglasses, a hat, or earrings (fig. 9; col. 11, line 60-col. 12, line 8). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to include the teaching of Ostermann in the invention of the modified Liles in order to provide further customizations to the user’s avatar in a chat session.

Response to Arguments

Applicant argued that examiner’s 112 rejection was inappropriate.

Examiner disagrees.

The term "substantially" in claims 21 and 52 is a relative term which renders the claim indefinite. The term "substantially" is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention. The claims and specification fail to define how the activity is being performed by the first user at "substantially the same time" that the out-of-band is communicated from the first user to the second user. For example, "substantially the same time" could mean exactly the same time or a 10 minutes delay.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Inquiries

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thanh T. Vu whose telephone number is (571) 272-4073. The examiner can normally be reached on Mon-Thur and every other Fri 7:30 AM - 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kristine L. Kincaid can be reached on (571) 272-4063. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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